IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL ST.NO.34885 OF 1997

National Insurance Co.Ltd. ...Appellant
vs.
Neelapu Amravathi & others ...Respondents

Mr.J.S.Chandanai for the Appellant

CORAM: A.S.OKA, J.
DATED: MARCH 31, 2006.

P.C.:

1. Heard learned Advocate for the Appellant. None for the Respondents. This Appeal is preferred by the Appellant-Insurance Company challenging the Judgment and Award dated 1st January 1996 passed by the learned Member of the Motor Accident Claims Tribunal, Raigad-Alibag. This Appeal which was filed in the year 1997 did not come up for admission till today as the application for condonation of delay filed by the Appellant was pending. The said application was dismissed for default and thereafter restoration application filed by the Appellant was pending in this Court for about five years.

2. In the present case, the accident claim arises out the accident involving a bus in which there were about 19 passengers. The Respondent No.1 is the original claimant who suffered injuries in the accident. The finding of the Tribunal is that the driver of the bus was rash and negligent and that was the reason for the accident.

3. The learned Advocate for the Appellant pointed out that the Appellant-Company has raised the defence that there was a breach of conditions incorporated in the Insurance policy on the part of the owner and driver of the bus. The finding of the Tribunal is that the breach was not proved by the Appellant.

4. It is a well settled position of law that the burden to establish that there was a breach on the part of the insured of the conditions incorporated in the policy is on the Insurance Company. In this case the finding is that except for producing a copy of the policy, no attempt was made by the Appellant to prove breach of conditions of the policy on the part of the insured. I find no reason to disturb the said finding of the Tribunal.

5. Perusal of the Judgment shows that the claim was contested by the driver and owner of bus. This is not a case where permission was granted to the Appellant-Company to defend the claim on behalf of the insured.

6. In view of the position and in view of the fact that the Appellant-Company has failed to establish breach of the conditions of the policy, no case for interference is made out. Accordingly, Appeal is dismissed with no order as to costs.

Judge.